IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CHAMBER SUMMONS NO.1335 OF 2005

IN

SUIT NO.2939 OF 1999

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M/s.Foreshore Co.operative Housing
Society Ltd. ...Plaintiffs

v/s.

Shri Praveen D. Desai & Ors. ...Defendants

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Mr.S.H.Doctor with Mr.B.B.Saraf, Mr.M.S.Doctor and Ms.Tally i/b S. Mohomedbhai & Co. for the Plaintiffs.

Mr.Ravi Kadam, Advocate General with Mr.V.B.Naik i/b M/s. M.K.Ambalal & Co. for Defendants Nos. 3 & 4.

Mr.J.Reis for Defendant No.7.

Mr.D.D. Madon with mr.Cyrus Adreshir i/b Kanga & Co. for Defendant No.8.

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CORAM: D.K.DESHMUKH, J.

DATED: 8TH DECEMBER,2005

P.C.:

1. This chamber summons is taken out by the Plaintiffs for carrying out amendments in the plaint. The nature of the pleas that are to be included by amendment are:

(i) In the plaint, the Plaintiffs challenges the sanction given to the building plan submitted by the Defendant No.2 to the Corporation. They also challenge the order by which the building plan was revalidated by the corporation. The building plan was revalidated by the corporation during the pendency of suit. The Plaintiffs by the amendment are incorporating the plea for challenging the revalidation granted during the pendency of the suit.

(ii) The Plaintiffs are claiming that they have issued notice to the Corporation under Section 527 of the Bombay Municipal Corporation Act. Therefore, there is a defect in the plaint on that count. The Plaintiffs claim that for the purpose of considering whether the suit is within the period of limitation or not, the period taken by the Plaintiffs for prosecuting the suit in the City Civil Court should be excluded.

2. These amendments are opposed by the Defendants, mainly on the ground that these amendments are being introduced by the Plaintiffs after considerable delay. There is no explanation given for not incorporating these pleas in the plaint at an earlier point of time. That these amendments are being introduced only after the Defendants raised an objection to the maintainability of the suit on the ground of limitation as also on the ground of lack of statutory notice to the Municipal Corporation.

3. I have heard the learned Counsel appearing for both sides at length. In my opinion, considering the

law laid down by the Supreme Court in relation to the power of the court to grant amendments in the pleadings, especially the judgment of the Supreme Court in the case of Ragu Thilak D. John v/s. S.Rayappan and ors, (2001(2 SCC 472, merely because there is delay in making an application for amendment and that the amendment is being introduced in the plaint to cure the defect that was pointed out by the Defendant in the plaint is no ground to reject the application for amendment. No doubt, if the Plaintiff introduces amendments in the plaint after the Defendant raises an objection to the maintainability of the suit and when there is delay involved, then there is prejudice caused to the interest of the Defendant, but that prejudice caused to the interest of the Defendant on that account is capable of being mitigated by awarding costs against the Plaintiff. In my opinion, therefore, in the facts and circumstances of the case following order would meet the ends of justice.

O R D E R

Chamber Summons is granted in terms of prayer clauses (a) & (b). The Plaintiff , however, is directed to

pay as and by way of costs of this Chamber summons Rs.10,000/- to the Defendant No.8, as by filing reply to the Chamber Summons the amendments are seriously opposed by the Defendant No.8.

It is clarified that this chamber summons is being granted without prejudice to the pending notice of motion taken out by the Plaintiff.

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